

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

DE'EDWARD GLENN,)
)
)
Plaintiff,)
)
)
v.) 1:23CV449
)
WINSTON SALEM POLICE)
DEPARTMENT, et al.,)
)
)
Defendant(s).)

ORDER

The Order and Recommendation of the United States Magistrate Judge was filed with the Court in accordance with 28 U.S.C. § 636(b) and, on June 15, 2023, was served on the parties in this action. No objections were filed within the time prescribed by § 636; however, Plaintiff filed a motion to amend the Complaint in response to the Magistrate Judge's Recommendation, attaching the proposed Amended Complaint. (ECF Nos. 5, 5-1.)

Plaintiff's motion to amend the Complaint, (ECF No. 5), is unnecessary as he may amend his pleadings as a matter of course. Therefore, the motion is denied as moot. Notwithstanding such, and considering the amended pleading, it does not alter the conclusion that dismissal of this action is appropriate. In the proposed amended complaint Plaintiff essentially reasserts the allegations from the original Complaint but now raises claims under 10 U.S.C. § 914 - Art. 114 and "consequently" the Fourteenth Amendment. (*See* ECF No. 5-1 at 3.) Additionally, Plaintiff asserts a violation of North Carolina General Statute § 14-32. (*Id.* at 4.) First, Plaintiff fails to allege how any claim under 10 U.S.C. § 914, which is part of

the Uniform Code of Military Justice and generally applies to members of the armed forces, *see* 10 U.S.C. § 802, relates to any of the named defendants. Nor does Plaintiff's conclusory reference to the Fourteenth Amendment make Plaintiff's 1983 claims cognizable. Further, N.C. Gen. Stat. § 14-32 is the North Carolina criminal felonious assault statute and does not authorize a private cause of action. *See* N.C. Gen. Stat. § 14-32. Accordingly, like Plaintiff's original pleading, the Amended Complaint is frivolous, malicious, and fails to state a claim upon which relief may be granted.

The Court has also considered Plaintiff's motion to the extent that it could be considered objections to the Magistrate Judge's Recommendation, and the Court has made a *de novo* determination which is in accord with the Magistrate Judge's Recommendation.

IT IS THEREFORE ORDERED that the Magistrate Judge's Recommendation, (ECF No. 3), is **ADOPTED**.

IT IS FURTHER ORDERED that Plaintiff's Motion to Amend the Complaint, (ECF No. 5), be **DENIED AS MOOT**.

IT IS FURTHER ORDERED that this action be **DISMISSED** pursuant to 28 U.S.C. § 1915A for being frivolous or malicious or for failing to state a claim upon which relief may be granted.

This, the 16th day of January 2024.

/s/ Loretta C. Biggs
United States District Judge